

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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FRANCIS B. VOLANTE,

Plaintiff,

v.

ORDER  
01-CV-55A

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

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The plaintiff, Francis B. Volante, brought this action on January 26, 2001, seeking review of a final determination of the Commissioner of Social Security disallowing disability benefits to the plaintiff for a period of time. This case was referred to Magistrate Judge Hugh B. Scott pursuant to 28 U.S.C. § 636(b)(1) on November 18, 2002. Both parties filed motions for judgment on the pleadings. On September 24, 2004, Magistrate Judge Scott filed a Report and Recommendation, recommending that the Commissioner's motion for judgment on the pleadings be granted, and that the plaintiff's motion be denied.

Plaintiff filed objections to the Report and Recommendation on September 24, 2004, and the Commissioner filed a response thereto. On February 8, 2005, the parties appeared for oral argument, at which time the Court granted the

plaintiff's request to provide supplemental briefing. Plaintiff filed his supplemental brief in support of his objections on February 15, 2005, and the Commissioner filed a supplemental brief in opposition to plaintiff's objections on March 22, 2005.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Scott's Report and Recommendation, the plaintiff's motion for judgment on the pleadings is denied, and the Commissioner's motion for judgment on the pleadings is granted.

The Clerk of Court shall take all steps necessary to close the case.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT

DATED: September 23 , 2005